

REMARKS

Claims 1, 3-4 ,9-13, 15-16, 19, 21, are pending. No claims are withdrawn.
Claims 2,5-8, 20-109 have been canceled.

Support for the claim 1 limitation “a locking clip received in the recess of the elongated shaft” is found earlier in claim 1.

Claim 1 stands objected to for the following informality: The Examiner requested that claim 1 be amended to recite “an inner plate comprising an inner outer surface having a first articulation surface, an outer inner surface, and a body portion therebetween”.

Applicant has done so.

Claim 1 stands objected to for the following informality: The Examiner requested that claim 1 be amended to recite: “ herein the elongated channel comprises means for capturing the screw”

Applicant has done so.

Claims 1,3,4,9-11,13,15,16,19, and 21 stand rejected under 35 USC 112, second paragraph as indefinite because:

a) the claim 1 limitation “wherein the screw comprises a longitudinal shaft having a thread thereon” appears redundant with a previous limitation.

Applicant has deleted the phrase “longitudinal shaft having a thread thereon” from this passage.

b) the claim 1 limitation “wherein the elongated channel further comprises an anterior recess and a posterior recess defined by necks in the elongated channel” appears to be the “means for capturing the screw”.

Applicant affirms the Examiner's understand and has amended claim 1 so that the claim explicitly recites that the means for capturing the screw comprises an anterior recess and a posterior recess defined by necks in the elongated channel.

- c) the claim 13 limitation “wherein the screw further comprises a head” is redundant because claim 1 already recites the screw as comprising a proximal head.

Applicants have amended claim 13 so that “the head of the screw is further comprises a head selected from the group consisting of...”

Therefore, in light of the present amendments, the present indefinite rejection should be withdrawn.

Claims 1,3,4,9-11,13,15,16,19, and 21 stand provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1,12,13,15,18-20,23-26,37,39,40,46-48 of copending application No. 11/015,927.

Applicants will file a terminal disclaimed when and if needed.

Claims 1-10, 12,13,15,16,19,24,25, and 47 stand rejected under 35 USC 102 as being anticipated by US Patent No. 6,045,579 (“Hochshuler”).

Claim 1 requires a captured screw, wherein the blunt distal tip and the proximal head of the screw are respectively seated in the anterior recess and the posterior recess of the outer plate to render the screw captured and spatially fixed save rotation. The important limitation is that the structure be able to render the screw captured and spatially fixed save rotation.

In contrast, Hochshuler does not have a captured screw that is spatially fixed save rotation. Rather, Hochshuler's screw moves axially (compare Figures 12 versus 13, and Figures 14 versus 15). Indeed, Hochshuler explicitly states this fact: “The connector may be rotated in a counterclockwise direction to move the connector in a direction from the posterior end to the anterior end, thereby decreasing height 20.” (col. 9 , lines 33-35 of Hochshuler).

Because Hochshuler does not have structure that renders the screw captured and spatially fixed save rotation, the present anticipation rejection should be withdrawn.

Therefore, the present rejection in light of Hochshuler should be withdrawn.

Claims 1,3,4,9,10,13,15,16,19 stand rejected under 35 USC 102 as being anticipated by US Patent No. 6,454,806 (“Cohen”).

Applicant previously argued that “Claim 1 has been amended to contain all the requirements of claim 12. Since claim 12 was not rejected in view of Cohen, this rejection should be withdrawn.”

However, in the final Office Action, the Examiner took the position that claim 12 depended from now-canceled claim 8 (“wherein the channel comprises means for capturing the screw”), and since claim 1 did not contain this claim 8 limitation, the present claim 1 did not contain all the limitations of claim 12.

Applicants respectfully traverse. Claim 1 has contained the limitation “wherein the channel comprises means for capturing the screw”, and now contains the limitation “wherein the elongated channel comprises means for capturing the screw”.

Moreover, the Examiner also appears to state that claim 1 does not contain the claim 12 limitation of “a recess in the elongated shaft of the screw, the recess being adapted for reception of a locking clip”.

Applicants respectfully traverse and aver that claim 1 contains the limitation specifying “the elongated shaft comprising a recess adapted for reception of a locking clip”, which appears to be equivalent to the claim 12 limitation.

Lastly, the Examiner appears to continue the Cohen anticipation because the locking clip is not positively claimed.

Applicant has amended claim 1 so that a locking clip is now positively claimed.

Therefore, because present claim 1 contains all the limitations of now-canceled claim 12, the present rejection in light of Cohen should be withdrawn.

As the response to the above-captioned office action was due on May 28, 2008, please provide for a two (2) month extension of time and charge the appropriate fee which is due to Deposit Account No. 10-0750, but do not include any payment of issue fees. Accordingly, the due date for response is now June 28, 2008.

In addition, please provide any additional extensions of time which may be necessary and charge any fees which may be due to Deposit Account No. 10-0750, but do not include any payment of issue fees.

Should there be any remaining or further questions, the Examiner is requested to place contact the undersigned directly.

Respectfully submitted,

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